



Commission on the Efficacy
of the CON Program

Legal & Regulatory Sub-Committee:

CON Review and Appeals Process

Selected States

July 11, 2006



Items Covered

- Review Process
- Covered Health Services
- Review Volume
- Review Thresholds
- Appeals Process



CON REVIEW PROCESS:

State Comparison





GEORGIA: CON Review Process

- Completeness check: 10 days
- Review period:
 - 45 days expedited
 - 90 days unless extended to 120 days
- Meeting at 60th day to determine whether project should be denied
- Opposition to project must be received by 60th day of review period
- Applicants must file additional information prior to the 75th day
 - Amendments must be filed by the 80th day
- Administrative appeals may be filed within 30 days of decision
- Batched processing may be applied to competing applications
 - Review timeframes vary
- Final Decision Making Authority
 - Health Planning Division Staff
 - Georgia Health Planning Review Board on Appeals





- No CON Program
- Repealed in 1987
- Statutory moratorium on Medicaid-certified nursing home beds
- Licenses health care services in addition to health care facilities





- Two batching review cycles in each project category:
 - Hospital beds and facilities
 - Other beds and programs
- Review period:
 - 60 days standard review
- Final Decision Making Authority
 - Secretary, Agency of Health Care Administration





IOWA: CON Review Process

- Letter of Intent initiates the process
 - Application must be filed within 30 days of Letter of Intent
- Completeness Check: 15 days
- Review period:
 - 90 days standard review
- Final Decision Making Authority
 - State Health Facilities Council (five gubernatorial appointees)
 - Administrative and judicial reviews of decisions permissible





MAINE: CON Review Process

- Letter of Intent must be filed at least 90 days before review cycle begins
- Applications must be received and deemed complete prior to the start of the applicable review cycle
- There are two review cycles:
 - Large Project review cycle: Begins January 1 of each year
 - Small Project review cycle: Begins April 1 annually
- Review Period: 150 days
- Public hearing held on each complete application
- Public hearing must be requested within 30 days following the public meeting
- Final Decision Making Authority
 - Commissioner, Department of Health and Human Services
 - Administrative and judicial review permissible within 30 days of the decision upon request



MASSACHUSETTS: CON Review Process

- Determination of Need
- Completeness Check: 30 days of submission
- Review period:
 - Approximately one year for standard review
- Different filing dates based on service type
 - “Comparable” applications reviewed concurrently or batched
- Final Decision Making Authority
 - Commissioner
 - Public Health Council if there is disagreement among applicant, program staff and other parties





OREGON: CON Review Process

- Certificate of Public Need
- Review timelines and procedures vary
- Review period:
 - 90 days standard review
- Final Decision Making Authority
 - Department of Human Services





- No CON Program
- Repealed in 1984
- Moratorium on Long Term Care: nursing homes and assisted living
- Legislature has established a task force to improve access to health care services





WASHINGTON: CON Review Process

- Certificate of Public Need
- Letter of Intent initiates the process
 - Application must be filed within 30 days of Letter of Intent
- Completeness Check: 15 days
- Review period:
 - 50 days expedited review
 - 90 days standard review
 - 135 days concurrent (batched) review
- Final Decision Making Authority
 - Office Chief makes initial decision
 - Secretary of Department of Health makes final decision
 - Administrative appeals decision rendered within 28 days upon request





W. VIRGINIA: CON Review Process

- Letter of Intent initiates the process
- Review period: 58 days
- Final Decision Making Authority
 - Health Care Cost Review Board (3 members)





- Resource Allocation Program-Long Term Care
- Letter of Intent initiates the process
- Review period:
 - 45 days standard review
- Final Decision Making Authority
 - Secretary, Department of Health and Social Services





CON Review Process

STATE	Batched	Review Period	Issuing Body
Georgia	NO (Except Home Health and Nursing Home)	90 days (may be extended to 120 days)	Agency Review Analyst
Colorado	--	--	--
Florida	For Some Services	60 days	Agency
Iowa	No	90 days	State Health Facilities Council (5 members)
Maine	Yes (all services)	150 days	Agency
Massachusetts	For Some Services	1 year	Agency, Public Health Council if disagreement
Oregon	No	90 days	Agency
Utah	--	--	--
Washington	For Some Services	90 days	Agency Review Analyst
W. Virginia	No	58 days	Health Care Cost Review Board (3 members panel)
Wisconsin	No	45 days	Agency



COVERED HEALTH SERVICES:

State Comparison





GEORGIA: Health Services Covered

- Ambulatory Surgery Centers
- Cardiac Catheterization
- Gamma Knives
- Home Health
- Hospitals/Beds
- ICF/MR
- LTCH
- Lithotripsy
- Nursing Homes
- NICU
- Obstetrical
- Open Heart
- PET Scanners
- Psychiatric Beds
- Radiation Therapy/Linear Accelerator
- Assisted Living
- Substance Abuse
- Stereotactic Radiosurgery

NOTE: CT Scanners, MRI Scanners, Renal Dialysis Equipment and Ultrasound are covered when their value exceeds the equipment expenditure threshold. Medical Office Buildings are covered when constructed by a health care facility.





FLORIDA: Health Services Covered

- Hospice
 - Hospitals/Beds
 - ICF/MR
 - LTAC
 - Nursing Homes/Beds
 - NICU
 - Organ Transplant
 - Psychiatric Beds
 - Rehabilitation
 - Sub-acute Care
 - Substance Abuse
1. Moratorium on Specialty Hospitals
 2. Allows competitive sealed applications for Nursing Home and LTC services
 3. Until 2009, no CON to expand hospital beds except in slow-growth counties





IOWA: Health Services Covered

- Ambulatory Surgery Centers
- Cardiac Catheterization
- Hospitals/Beds
- ICF/MR
- Nursing Homes/Beds
- Open Heart
- Organ Transplant
- PET Scanners
- Radiation Therapy





MAINE: Health Services Covered

- Air Ambulance
- Ambulatory Surgery Centers
- Burn Care
- Cardiac Catheterization
- CT Scanners
- Gamma Knives
- Hospitals/Beds
- Intermediate Care Facility for People with Mental Retardation (ICF/MR)
- Lithotripsy
- MRI Scanners
- Mobile High Tech
- Nursing Homes
- NICU
- Obstetrical
- Open Heart
- Organ Transplant
- PET Scanners
- Psychiatric Beds
- Renal Dialysis





MASSACHUSETTS: Health Services Covered

- Air Ambulance
- Ambulatory Surgery Centers
- Gamma Knives
- Lithotripsy
- MRI Scanners
- Nursing Homes/Beds
- NICU
- Extracorporeal Membrane Oxygenation
- Open Heart
- Organ Transplant
- PET Scanners
- Psychiatric Beds
- Radiation Therapy/Linear Accelerator
- Rehabilitation
- Substance Abuse





OREGON: Health Services Covered

- Nursing Homes/Beds
- Swing Beds
- New Hospitals (but not expansions)





WASHINGTON: Health Services Covered

- Ambulatory Surgery Centers
- Burn Care
- Cardiac Catheterization
- Home Health
- Hospice
- Hospitals/Beds
- LTAC
- Nursing Homes/Beds
- NICU
- Obstetrical
- Open Heart
- Organ Transplant
- Psychiatric Beds
- Rehabilitation
- Renal Dialysis
- Sub-acute Care
- Swing Beds





W. VIRGINIA: Health Services Covered

- Ambulatory Surgery Centers
- Cardiac Catheterization
- Home Health
- Hospice
- Hospitals/Beds
- ICF/MR
- Lithotripsy
- LTAC
- MRI Scanners
- Nursing Homes
- NICU
- Open Heart
- PET Scanners
- Psychiatric Beds
- Radiation Therapy
- Rehabilitation
- Renal Dialysis
- Behavioral Health





WISCONSIN: Health Services Covered

LONG TERM CARE SERVICES ONLY

- ICF/MR
- Nursing Homes/Beds
- Sub-acute Care



REVIEW THRESHOLDS:

State Comparison





GEORGIA : Review Thresholds

- Capital Expenditure: \$1,483,083
- Equipment Threshold: \$823,934





FLORIDA: Review Thresholds

- Capital Expenditure Threshold: N/A
- Equipment Threshold: N/A





IOWA: Review Thresholds

- Capital Expenditure Threshold: \$1,500,000
- Equipment Threshold: \$1,500,000





MAINE: Review Thresholds

- Capital Expenditure Threshold: \$2,666,198
- Equipment Threshold: \$1,333,099





MASSACHUSETTS: Review Thresholds

- Capital Expenditure Thresholds:
 - \$12,516,300 for acute care facilities
 - \$1,335,072 for non-acute care facilities
- Equipment Threshold:
 - \$667,535 for non-acute facilities
 - no specific threshold for acute care facilities
- Nursing Homes have a clinical annual operating cost threshold of \$648,272





OREGON: Review Thresholds

- Capital Expenditure Threshold: Any LTC/New Hospital
- Equipment Threshold: N/A





- Capital Expenditure Threshold: Varies by service
- Equipment Threshold: N/A





W. VIRGINIA: Review Thresholds

- Capital Expenditure Threshold: \$2,000,000
- Equipment Threshold: \$2,000,000





WISCONSIN: Review Thresholds

- Capital Expenditure Threshold: \$1,000,000
- Equipment Threshold:\$600,000





CON Review Thresholds

STATE	Capital Expenditure	Equipment	Adjusts Annually
Georgia	\$1,483,083	\$823,934	Yes
Colorado	--	--	--
Florida	None	None	NA
Iowa	\$1,500,000	\$1,500,000	No
Maine	\$2,666,198	\$1,333,099	Yes
Massachusetts	\$12,516,300	\$1,333,072	Yes
Oregon	None	None	NA
Utah	--	--	--
Washington	Varies by Service	None	NA
W. Virginia	\$2,000,000	\$2,000,000	No
Wisconsin	\$1,000,000	\$600,000	No



REVIEW VOLUME:

State Comparison





GEORGIA : Review Volume

FY 2005-GEORGIA*

	Hospitals	Long Term Care	Freestanding	Mobile Services	TOTAL
<i>Number of Applications</i>	69	8	NR	NR	101
<i>Total Dollars</i>	\$829,256,368	\$7,037,182	NR	NR	\$909,577,926
<i>Approved Dollars</i>	\$766,372,900	\$3,369,180	NR	NR	\$822,546,600





FLORIDA: Review Volume

FY 2005-FLORIDA

	Hospitals	Long Term Care	Freestanding	Mobile Services	TOTAL
<i>Number of Applications</i>	101	11	30	0	142
<i>Total Dollars</i>	\$808,559,740	\$9,215,328	\$31,010,954	\$0	\$848,786,022
<i>Approved Dollars</i>	\$419,927,139	\$9,215,328	\$28,682,606	\$0	\$457,825,073





IOWA: Review Volume

FY 2005-IOWA

	Hospitals	Long Term Care	Freestanding	Mobile Services	TOTAL
<i>Number of Applications</i>	10	6	1	0	17
<i>Total Dollars</i>	\$25,740,380	\$3,196,016	\$81,000	\$0	\$29,017,396
<i>Approved Dollars</i>	\$25,740,380	\$3,053,741	\$0	\$0	\$28,794,121





MAINE: Review Volume

FY 2005-MAINE					
	Hospitals	Long Term Care	Freestanding	Mobile Services	TOTAL
<i>Number of Applications</i>	13	1	0	0	14
<i>Total Dollars</i>	\$200,243,099	\$10,021,000	\$0	\$0	\$210,264,099
<i>Approved Dollars</i>	\$200,243,099	\$10,021,000	\$0	\$0	\$210,264,099





FY 2005-MASSACHUSETTS

	Hospitals	Long Term Care	Freestanding	Mobile Services	TOTAL
<i>Number of Applications</i>	NR	NR	NR	NR	NR
<i>Total Dollars</i>	NR	NR	NR	NR	NR
<i>Approved Dollars</i>	\$NR	NR	NR	NR	NR





OREGON: Review Volume

FY 2005-OREGON*

	Hospitals	Long Term Care	Freestanding	Mobile Services	TOTAL
<i>Number of Applications</i>	1	2	0	0	3
<i>Total Dollars</i>	\$\$200,000	\$6,662,173	\$0	\$0	\$6,862,173
<i>Approved Dollars</i>	\$200,000	\$3,305,468	\$0	\$0	\$3,505,468





WASHINGTON: Review Volume

FY 2005-WASHINGTON*

	Hospitals	Long Term Care	Freestanding	Mobile Services	TOTAL
<i>Number of Applications</i>	6	1	37	0	44
<i>Total Dollars</i>	NR	NR	NR	\$0	NR
<i>Approved Dollars</i>	\$177,833,082	\$2,267,014	\$16,719,906	\$0	\$196,820,002





W. VIRGINIA: Review Volume

FY 2005-WEST VIRGINIA

	Hospitals	Long Term Care	Freestanding	Mobile Services	TOTAL
<i>Number of Applications</i>	29	2	43	0	74
<i>Total Dollars</i>	\$309,027,949	\$13,000,000	\$56,656,058	\$0	\$378,684,007
<i>Approved Dollars</i>	\$309,027,949	\$13,000,000	\$56,656,058	0	\$376,684,007





WISCONSIN: Review Volume

FY 2005-WISCONSIN					
	Hospitals	Long Term Care	Freestanding	Mobile Services	TOTAL
<i>Number of Applications</i>	0	0	0	0	0
<i>Total Dollars</i>	\$0	\$0	\$0	\$0	\$0
<i>Approved Dollars</i>	\$0	\$0	\$0	\$0	\$0





CON Review Volume (FY 2005)

STATE	Number of Applications	Dollars
Georgia	101	\$909,577,926
Colorado	--	--
Florida	142	\$848,786,022
Iowa	17	\$29,017,396
Maine	14	\$210,264,099
Massachusetts	NR	NR
Oregon	3	\$6,862,173
Utah	--	--
Washington	44	\$196,820,002
W. Virginia	74	\$378,684,007
Wisconsin	0	\$0



APPEALS PROCESS:

State Comparison





GEORGIA: Appeals Process

- Appeal must be made to a separate agency, Health Planning Review Board, within 30 days of issuance of decision
- Hearing Officer appointed by Health Planning Review Board; holds *de novo* hearing; hearing to be held within 60 days of appointment unless agreed to by all parties
- Hearing Officer must make decision within 30 days of close of record (generally approximately 60 days after hearing)
- Hearing Officer decision can be appealed to Health Planning Review Board within 30 days of decision
 - HPRB consists of 9 individuals appointed by Governor with no association with Health Care facilities; Chair must be attorneys
- HPRB must meet within 60 days of Hearing Officer Decision
- The HPRB decision becomes the final decision of the Department; the Department cannot appeal the decision of the HPRB
- Other parties may appeal to the Superior Court within 30 days of the HPRB decision





FLORIDA: Appeals Process

- Within 21 days after publication of notice of the State Agency Action Report and Notice of Intent, any person authorized to participate in a hearing may file a request for an administrative hearing
- The agency shall assign proceedings requiring hearings to the Division of Administrative Hearings of the Department of Management Services within 10 days
- Hearings shall commence within 60 days after the administrative law judge has been assigned
- All parties, except the agency, shall bear their own expense of preparing a transcript
- **ALJ only makes recommended order:** the administrative law judge shall complete and submit to the parties a recommended order within 30 days after the hearing
- The Agency shall adopt procedures for administrative hearings which shall maximize the use of stipulated facts and shall provide for the admission of prepared testimony
- **Agency issues final order:** The agency shall issue its final order within 45 days after receipt of the recommended order
- Judicial Review: A party to an administrative hearing for an application for a certificate of need has the right, within not more than 30 days after the date of the final order, to seek judicial review in the District Court of Appeal





IOWA: Appeals Process

- Any dissatisfied party who is an affected person with respect to the application, and who participated or sought unsuccessfully to participate in the formal review procedure may request a rehearing from the Agency
- If a rehearing is not requested or an affected party remains dissatisfied after the request for rehearing, an appeal may be taken to the judiciary





MAINE: Appeals Process

- Any person directly affected by a review under this chapter may, for good cause shown, request in writing a hearing for the purpose of reconsideration of the decision of the department to issue or to deny a certificate of need within 30 days of the department's decision.
- **Department conducts reconsideration hearing:** If the department determines that good cause for a hearing under this section has been demonstrated, the department shall commence a hearing within 30 days of receipt of the request. For purposes of this section, a request for a hearing is considered to show good cause if it:
 - Presents significant, relevant information not previously considered by the department;
 - Demonstrates that there have been significant changes in factors or circumstances relied upon by the department in reaching its decision;
 - Demonstrates that the department has materially failed to follow its adopted procedures in reaching its decision; or
 - Provides other bases for a hearing that the department has determined constitute good cause.
- A decision must be rendered within 60 days of the commencement of a hearing under this section, except that the parties may agree to a longer time period.
- Any person aggrieved by a final decision of the department made under the provisions of this Act is entitled to judicial review





MASSACHUSETTS: Appeals Process

- Must request a public hearing within 14 days after issuance of determination and file an appeal to the Health Facilities Appeals Board
- The Board in considering any such appeal shall restrict itself to a **review of materials on file** with the department and to consideration of whether the determination appealed from was an abuse of discretion
- In the event the Board determines that the materials available to it are inadequate to allow the required consideration, it may order a hearing on the appeal. Such appeal shall be heard by the board or its designated hearing officer within 30 days after its filing
- Within 30 days after hearing, shall submit a recommended decision to the Board
- **Board makes final decision:** The Board shall, within 60 days after filing of the appeal issue a final decision either denying the appeal or order the matter remanded to the department for action consistent with the opinion of the Board; failure of the Board to issue a final decision within 120 days after filing of the appeal shall constitute a final decision affirming the action of the department and denying the appeal
- The Board consists of 5 persons to be appointed for terms of 3 years by the governor, at least 3 of whom shall be consumers of health care services who are not officers or employees of, and do not bear any fiduciary relationship to a person or institution providing health care services. One such consumer member shall be a member of the bar of the commonwealth and shall be designated by the governor to serve as chairman of the board. Persons appointed to the board shall be knowledgeable in matters pertaining to the delivery of health care services





OREGON: Appeals Process

- Only a denied applicant shall be entitled to a contested case hearing or judicial review
- Contested case hearing conducted by Agency in accordance with APA.





WASHINGTON: Appeals Process

- The department shall conduct a public hearing on a certificate of need application if requested unless the review is expedited or subject to emergency review
- **Agency makes decision:** Any applicant denied a certificate of need or whose certificate of need has been suspended or revoked has the right to an adjudicative proceeding. The proceeding is conducted in accordance with the APA
- **Opposing party must have participated in a public hearing during review process:** Any health care facility or health maintenance organization that: (i) Provides services similar to the services provided by the applicant and under review pursuant to this subsection; (ii) is located within the applicant's health service area; and (iii) testified or submitted evidence at a public hearing shall be provided an opportunity to present oral or written testimony and argument in an appeal proceeding





W. VIRGINIA: Appeals Process

- Any person may request in writing a public hearing for purposes of reconsideration of a state agency decision
- A request for a public hearing for purposes of reconsideration shall be considered to have shown good cause if, in a detailed statement, it
 - Presents significant, relevant information not previously considered by the state agency, and demonstrates that with reasonable diligence the information could not have been presented before the state agency made its decision
 - Demonstrates that there have been significant changes in factors or circumstances relied upon by the state agency in reaching its decision;
 - Demonstrates that the state agency has materially failed to follow its adopted procedures in reaching its decision; or
 - Provides such other bases for a public hearing as the state agency determines constitutes good cause
- A request for hearing shall be received within 30 days after the date of the state agency decision, and the hearing shall commence within 30 days of receipt of the request
- Hearings are conducted in accordance with APA
- **Reviewed by any other agency of the state designated by Governor:** The state agency shall make written findings which state the basis for its decision within 45 days after the conclusion of such hearing
- A decision of the state agency following a reconsideration hearing shall be subject to judicial review





WISCONSIN: Appeals Process

- **Only adversely affected applicant can appeal:** Any applicant whose project is rejected may request a public hearing to review the department's initial finding if the request is submitted in writing within 10 days after the department's decision
- The department shall commence the hearing within 30 days after receiving a timely request, unless all parties consent to an extension of this period
- Each applicant at any hearing under this subsection has the burden of proving, by clear and convincing evidence, that the department's initial finding was contrary to the weight of the evidence on the record when considered as a whole, arbitrary and capricious or contrary to law
- Any applicant adversely affected by a decision of the department under may petition for judicial review of the decision





Questions

